Supreme Court, U.S.
FILED
MAY 22 1996
CLERK

No. 95-1702

In The

Supreme Court of the United States

October Term, 1995

THE VILLAGE OF SUN,

Petitioner,

vs.

WALLACE RAY RITTER,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

BRETT J. PRENDERGAST
Counsel of Record
Attorney for Respondent
Suite 1641
FNBC Building
210 Baronne Street
New Orleans, Louisiana 70112
(504) 593-9277

8897
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

11 pp

TABLE OF CONTENTS

	Page
Reasons for Denying the Writ	1
I. The Fifth Circuit decided a simple question of law in accordance with over 100 years of this Court's jurisprudence.	1
II. The Fifth Circuit's interpretation of the Eleventh Amendment is completely consistent with decisions of the Ninth Circuit	4
Conclusion	8

TABLE OF CITATIONS

Cases Cited:

Alaska Cargo Transport v. Alaska Railroad Corporation, 5 F.3d 378 (9th Cir. 1993)	4, 5, 7
Lincoln County v. Luning, 133 U.S. 529, 10 S. Ct. 363, 33 L. Ed. 766 (1890)	3
Mitchell v. Los Angeles Community College Dist., 861 F.2d 198 (9th Cir. 1988)	4, 5
Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)	1, 2
Mt. Healthy City School District v. Doyle, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977)	2, 3, 5

Contents

Page

Quern v. Jordan, 440 U.S. __, 99 S. Ct. 1139, __ L. Ed. 2d __ (1979) 1, 2

Statute Cited:

42 U.S.C. § 1983 ..... 1, 2

United States Constitution Cited:

Eleventh Amendment 1, 2, 3, 4, 5

REASONS FOR DENYING THE WRIT

I.

THE FIFTH CIRCUIT DECIDED A SIMPLE QUESTION OF LAW IN ACCORDANCE WITH OVER 100 YEARS OF THIS COURT'S JURISPRUDENCE.

In the case at bar, the Village of Sun presented the Fifth Circuit with the simple question of whether the Village, indisputably a municipality under Louisiana law, was entitled to immunity from suit pursuant to the Eleventh Amendment. The Fifth Circuit responded with a simple answer — NO. Now, the Village seeks a writ of certiorari from this Court contending that the Fifth Circuit decided an important question of federal law and that the Fifth Circuit's decision conflicts with the case law of this Court. The Village is wrong on both counts.

The Village bases its entire argument on one line in footnote 54 of this Court's decision in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). The Village argues that the last sentence of that footnote wherein the Court stated "[o]ur holding today is, of course, limited to local government units which are not considered part of the State for Eleventh Amendment purposes" implies that 42 U.S.C. §1983 was not intended to extend to "all" municipalities. In support of this position the Village cites *Quern v. Jordan*, 440 U.S. __, 99 S. Ct. 1139, __ L. Ed. 2d __ (1979).

The fallacy of petitioner's reading of *Monell* is best demonstrated by an examination of the actual holding of the case. Immediately before the footnote cited by the Village, this Court stated its holding as follows: "Our analysis of the legislative history of the Civil Rights Act of 1871 compels the

conclusion that Congress did intend municipalities *and other local government units* to be included among those persons to whom § 1983 applies." *Monell v. Department of Social Services of the City of New York,* 436 U.S. at 690, 98 S. Ct. at 2035 (emphasis added). Thus, in footnote 54, when this Court limits its holding to "*local government units* which are not considered part of the State for Eleventh Amendment purposes", it clearly refers to the part of the holding referencing "other local government units" and does not imply that a municipality can be a part of the State for Eleventh Amendment purposes. Nothing in *Monell* suggests that § 1983 does not extend to every municipality.

The Village's reliance on *Quern* is also unfounded. This Court's decision in *Quern* involved defendants which were undeniably part of the State of Illinois. The *Quern* Court's reference to *Monell*'s footnote 54 was merely responding to the suggestion that *Monell* had somehow expanded the remedies which could be sought against state defendants in federal court. In no way does *Quern* suggest that §1983's scope does not include all municipalities.

Furthermore, the Village argument that the Fifth Circuit decision herein conflicts with the case law of this Court is wholly unsupported. Initially, it must be observed that the Village specifies not a single holding of this Court which contradicts the Fifth Circuit's decision on the inapplicability of the Eleventh Amendment to the Village. Curiously, the Village's Petition does not even address this Court's most significant cases dealing with the Eleventh Amendment. If the Village had done so, it would be forced to conclude that the Fifth Circuit's decision is completely consistent with the prior rulings of this Court.

This Court has considered the protection of the Eleventh Amendment on numerous occasions and has uniformly applied the standards articulated in *Mt. Healthy City School District v.*

Doyle, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977). In *Mt. Healthy*, 429 U.S. at 280, 97 S.Ct. at 57 this Court stated:

> The bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, . . . *but does not extend to counties and similar municipal corporations.* . . . The issue here thus turns on whether the Mt. Healthy Board of Education is to be treated as an arm of the State partaking of the State's Eleventh Amendment immunity or *is instead to be treated as a municipal corporation or other political subdivision to which the Eleventh Amendment does not extend.*

(Citations omitted, emphasis added). Holdings such as these can be traced back at least 100 years to this Court's decision in *Lincoln County v. Luning*, 133 U.S. 529, 530, 10 S. Ct. 363, 33 L. Ed. 766 (1890) where this Court rejected a county assertion of Eleventh Amendment immunity stating:

> [I]t may be observed that the records of this court for the last thirty years are full of suits against counties, and it would seem as though by general consent the jurisdiction of the federal courts in such suits has become established. But irrespective of this general acquiescence, the jurisdiction of the circuit courts is beyond question. The Eleventh Amendment limits the jurisdiction only as to suits against a State.
>
> * * *
>
> [W]hile the county is territorially a part of the State, yet politically it is also a corporation

> created by and with such powers as are given to it by the State. In this respect it is a part of the State only in that remote sense in which any city, town, or other municipal corporation may be said to be a part of the State.

Thus, this Court's Eleventh Amendment decisions required the Fifth Circuit to determine whether the Village of Sun was more like an arm of the state entitled to the immunity or more like a municipality not entitled to the immunity. Since the Village of Sun is undeniably a municipality, the Fifth Circuit made the only logical decision consistent with this Court's jurisprudence and found that the Eleventh Amendment did not extend to the Village. Such a simple and straightforward decision merits no further attention.

II.

THE FIFTH CIRCUIT'S INTERPRETATION OF THE ELEVENTH AMENDMENT IS COMPLETELY CONSISTENT WITH DECISIONS OF THE NINTH CIRCUIT.

The Village maintains that the Fifth Circuit decision in this case clashes with the decisions of the Ninth Circuit in *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198 (9th Cir. 1988) and *Alaska Cargo Transport v. Alaska Railroad Corporation*, 5 F.3d 378 (9th Cir. 1993). An examination of these two Ninth Circuit decision reveals how the Village has misread both of these opinions. While it is true that both *Mitchell* and *Alaska Cargo* examine five factors[1] to determine whether a

---

1. The five factors are (1) Whether a money judgment would be satisfied out of state funds; (2) Whether the entity performs central governmental (Cont'd)

governmental agency or governmental entity should be considered an arm of the state for Eleventh Amendment purposes, neither of these cases suggest that these factors should be applied to a municipality.

Mitchell, in fact, cites this Court's decision in *Mount Healthy* to support the proposition that "[t]o determine these factors, the court looks to the way state law treats the entity." *Mitchell,* 861 F.2d at 201. As noted above, *Mount Healthy* made clear that in an Eleventh Amendment analysis, arms of the state were on one side of the equation while municipalities were on the opposite side. Thus, both the Fifth Circuit's decision herein and the Ninth Circuit's decisions in *Mitchell* and *Alaska Cargo* are completely consistent with this Court's holding in *Mount Healthy.* Any differences in the opinions of the Fifth and Ninth Circuit result not from differing interpretations of the Eleventh Amendment but simply because they are examining different sides of the equation.

Finally, respondent feels compelled to point out the error in the Village's attempt to analogize itself to the railroad in *Alaska Cargo.* In *Alaska Cargo* the Ninth Circuit found that the crucial factor in that case was the second factor rather that the first (since under Alaska law the *Alaska Cargo* defendant rather than the state was obligated to pay any judgment).

> Thus, we cannot divorce the second *Mitchell* factor, the governmental function ARRC performs, from our assessment of the first factor, which is the impact on the State of Alaska of a judgment against ARRC.

(Cont'd)

functions; (3) Whether the entity may sue or be sued; (4) Whether the entity has the power to take property in its own name or only the name of the state; and (5) The corporate status of the entity. *Mitchell,* 861 F.2d at 201.

"[T]he entity created by state law" here is a unique and essential fixture in the lives of thousands of widely dispersed Alaskans. State law authorizes and requires ARRC to manage and operate a critical transportation supply, and communication network running from Seward and Whittier (warm water ports) in southern Alaska to Fairbanks, in south-central Alaska. . . . At Fairbanks, goods, services, and other essentials, of all types, are distributed into commerce streams reaching even further into the rugged outer reaches of central and northern Alaska. There can be no argument but that ARRC is the "[s]tate-owned railroad" upon which "many communities and individuals in Alaska are wholly and substantially dependent . . . for freight and passenger service," service that is an "essential government function." . . . The Railroad is the lifeline for many Alaskans in ways that highways are in the lower 48.

In its brief, Alaska Cargo virtually concedes that the railroad performs a vital governmental function; the legislature has declared that "[t]he continued operation of the Alaska Railroad by [ARRC] as provided in this chapter is considered an essential function of the state." . . . The uniqueness of Alaska's geography and harsh weather conditions make the operation of the railroad a necessity. It is even today the life-support system for thousands of Alaskans, providing transportation and supplies, and is important

> in ways that might seem quaintly old-fashioned to most of the rest of the country. It performs a central government function. To ensure that ARRC can perform its vital functions, state law provides to ARRC a financial safety net of broad dimension: ARRC, with the governor's permission, may request "a direct appropriation or grant from the legislature in carrying out the provisions" of its statutory mandate to provide rail services. . . . It is **required** to seek money from the legislature "to provide a particular service that is not otherwise self-sustaining if a subsidy is required to maintain that service."
>
> Significantly, federal law further provides that, until 1994, the State of Alaska must continue to provide rail carrier services across its system; otherwise, the real property conveyed to Alaska by the United States government incident to the transfer of the Railroad to the State of Alaska will revert to the federal government, unless Alaska pays the fair market price for the real property.

Alaska Cargo Transport, Inc., 5 F.3d at 380-381 (citations omitted). Given the foregoing, there is no basis for analogizing the Village of Sun to the defendant in *Alaska Cargo*. While the railroad which was the defendant in *Alaska Cargo* was a "unique and essential fixture in the lives of thousands of widely dispersed Alaskans", respondent submits, with all respect to the Village of Sun, that it does not have such a unique and essential role in the lives of the overwhelming majority of Louisiana citizens.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be denied.

Respectfully submitted,

BRETT J. PRENDERGAST
Counsel of Record
Attorney for Respondent
Suite 1641
FNBC Building
210 Baronne Street
New Orleans, Louisiana 70112
(504) 593-9277